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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,591	01/20/2006	Richard Merken-Schiller	HO-P03195US0	9719

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EXAMINER	
DURAND, PAUL R	
ART UNIT	**PAPER NUMBER**
3721	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/540,591	MERKEN-SCHILLER ET AL.	
	Examiner	Art Unit	
	Paul Durand	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-12 and 14-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-12 and 14-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 June 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/13/2007 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 and 3-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 21 and 25, it is unclear to the examiner what parts of the mold elements contain the edges and the upper portions.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 3-9, 14, 15, 17-21, 25, 27 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson (US 4,246,223) in view of Ellison et al. (US 2002/0079611).

In claim 1, Patterson discloses the invention as claimed including permanently deforming a sheet of film 28, by providing a positive and negative molds 54 and 52 respectively, having an edge portion and upper portion, forming depressions 70, in the film material, where the tension is controlled and maintained by draw pads 100, while forming controlled creases (in the area of 36) around the edges of the material, while the upper edge (i.e. the clamped edges) are kept in a flat original shape (See figures 2, 3, 6, 7 and col. 3, line 43 – col. 4, line 64). What Patterson does not disclose is the reduction of the tension in a controlled manner during the deforming procedure and the formation of a single depression.

However, Ellison teaches that it is old and well known in the art of article molding to control the reduction of film tension in the formation of a single depression receptacle while allowing the film to move into the cavity during a deformation process for the purpose of manufacturing a part of uniform thickness while reducing thinning (See figure 1, para. 0013 and 0029).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the tension control means as taught by Ellison for the purpose of manufacturing a part of uniform thickness.

In claim 3, the modified invention of Patterson, through Patterson discloses the invention as claimed including controlling the tension by applying retaining pressure to pad 100 in the peripheral regions 162 (See Patterson, figure 6 and col. 5, lines 21-39).

In claims 4-6, the modified invention of Patterson, through Patterson discloses the invention as claimed including, the peripheral regions moving parallel toward one another as the material is stretched in the die.

In claim 7, the modified invention of Patterson, through Patterson discloses the invention as claimed including forming substantially crease free regions 68 and controlled crease regions (in the area of 36) (See Patterson, figure 2).

In claims 8 and 9, the modified invention of Patterson, through Patterson discloses the invention as claimed including heating the web to a controlled temperature prior to deformation, where the temperature is lowered by the transfer of heat into the web (See Patterson, col. 6, lines 23-33).

In claims 14 and 15, the modified invention of Patterson, through Patterson discloses the invention as claimed including an unheated negative mold 52 and a heated positive mold brought to a constant temperature prior to forming (See Patterson, col. 6, lines 23-33).

In claims 17 and 18, the modified invention of Patterson, through Patterson discloses the invention as claimed including heating and deforming the web between a positive and negative mold 54 and 52, and a recovery time after the web has been formed and prior to the loading of the next web, which can be several seconds long

(See Patterson, figures 2,3,6,7 and col. 3, line 43 – col. 4, line 64). Additionally, Ellison teaches that it is old and well known in the art to relieve the tension in a controlled manner (See Ellison, page 1, para. 0013).

In claim 19 and 20, the modified invention of Patterson, through Patterson discloses the invention as claimed including the film web being delivered in cycles as blanks are formed by stamp 22 and 24 (See Patterson, figure 1 and col. 3, lines 43-61).

In claims 21 and 28 Patterson discloses the invention as claimed including permanently deforming a sheet of film 28, by providing a positive and negative molds 54 and 52 respectively, having an edge portion and upper portion, forming depressions 70, which the tension is controlled by draw pads 100, while forming controlled creases (in the area of 36) around the edges of the material, while the upper edge (i.e. the clamped edges) are kept in a flat original shape and filling the depression with food (See figures 2, 3, 6, 7, col. 1, lines 10-22 and col. 3, line 43 – col. 4, line 64). What Patterson does not disclose is the reduction of the tension in a controlled manner during the deforming procedure.

However, Ellison teaches that it is old and well known in the art of article molding to control the reduction of film tension in the formation of a single depression receptacle while allowing the film to move into the cavity during a deformation process for the purpose of manufacturing a part of uniform thickness while reducing thinning (See figure 1, para. 0013 and 0029).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the

tension control means as taught by Ellison for the purpose of manufacturing a part of uniform thickness.

In claims 25 and 27, Patterson discloses the invention as claimed including permanently deforming a sheet of film 28, using positive and negative molds 54 and 52, having an edge portion and upper portion, for forming depressions 70, where the tension is controlled and maintained by draw pads 100, while forming controlled creases (in the area of 36) around the edges of the material, while the upper edge (i.e. the clamped edges) are kept in a flat original shape and heating means 172 and 174 (See figures 2, 3, 6, 7 and col. 3, line 43 – col. 4, line 64). What Patterson does not disclose is the reduction of the tension in a controlled manner during the deforming procedure.

However, Ellison teaches that it is old and well known in the art of article molding to control the reduction of film tension in the formation of a single depression receptacle while allowing the film to move into the cavity during a deformation process for the purpose of manufacturing a part of uniform thickness while reducing thinning (See figure 1, para. 0013 and 0029).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the tension control means as taught by Ellison for the purpose of manufacturing a part of uniform thickness.

6. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison in view of Prena (US 3,762,125).

The modified invention of Patterson discloses the invention as claimed as applied to claim 1 above except for the use of indicia on the web of material, which is deformed

during the packaging process. However, Prena teaches that it is old and well known in the art of packaging to provide a film "F" with printed and undistorted indicia marks 48, which are stretched and deformed by rollers 36 and 38 prior to packaging for the purpose of correctly orienting a film prior to filling (See figure 3 and col. 5, lines 26-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the film deformation means as taught by Prena for the purpose of correctly orienting a film prior to filling.

7. Claims 16 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison in view of Fujii (US 4,124,421).

The modified invention of Patterson discloses the invention as claimed as applied to claims 1 and 13 above except for the use of a vacuum source to assist in the deformation process. However, Fujii teaches that it is ld and well known in the art of package forming to utilize a vacuum source 46, located in a female die for the purpose of forming a package with a defined depression (see figure 3 and col. 4, lines 12-42).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the vacuum means as taught by Fujii for the purpose of forming a package with a defined depression.

8. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison in view of Porteous (US 5,009,056).

The modified invention of Patterson discloses the invention as claimed as applied to claim 21 above except for introducing the food in a free flowing state and sealing the

package after filling. However, Porteous teaches that it is old and well known in the art to form a package from a web of material 14, where the package is filled with a material in a free flowing state and subsequently sealed by heat bonding for the purpose of efficiently forming and filling a package (see figures 3, 5, 8 and col. 4, line 4 – col. 5, line 14).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the forming and filling means as taught by Porteous for the purpose of efficiently forming and filling a package.

Response to Arguments

9. Applicant's arguments filed 11/3/2007 have been fully considered but they are not persuasive.

Applicant argues that the combination of Patterson and Ellison do not teach or disclose all of the elements of independent claims 1, 21 and 25. For the reasons set forth below, the examiner asserts that the rejection is proper and is maintained.

Applicant first argues that Patterson teaches forming a receptacle with multiple depressions. The examiner does agree that Patterson generally discloses the manufacturing of a tray utilizing several depressions. However, Ellison teaches that it is well known to manufacture a container with a single container; likewise with Porteous which the examiner has utilized for the rejection of dependant claims 22-24. Alternatively, the examiner asserts that it is a matter of design choice, based on

customer requirements, that the container should be manufactured with single or multiple depressions.

Applicant further argues that the combination of Patterson and Ellison do not disclose the ability to relieve the tension on the material during formation to allow the material to move into the mold. The examiner does not agree with this argument. As stated above Patterson discloses a stationary clamping means which holds the film during formation. Ellison discloses in paragraph 0026 that "Advantageously, the strength of the clamping force by frame 14 against film 10 may be varied electrically as desired in the molding cycle. For example, the clamping force can be maximum as the core engages the film and then reduced as the mold continues to close to allow film slippage as desired and to the desired extent." The examiner asserts that Ellison teaches this limitation.

Applicant further argues that Patterson utilizes creases in the web material to control the formation of the creases thereby suggesting that the Patterson is attempting to teach away from the formation of creases. The examiner does not agree with this argument. As the examiner understands the reference, Patterson utilizes the creases to induce, not avoid the formation of creases during the molding process. Patterson recites on col. 3, lines 58-61 that the "main purpose of the scoring is to control the formation of wrinkles in the finished tray. Specifically, the scoring causes the wrinkles to form in the scored regions 36."

Moreover, while Patterson does not disclose creasing the entire sidewall edge, this again is a matter of design choice. Alternatively, the term edge is open to some

interpretation. In broad reasonable terms, "edge" could encompass the upper lip part of the tray which is creased around the entire edge.

Applicant lastly and broadly argues that the dependant claims are allowable insofar as the independent claims are in condition for allowance. For the reasons set for the above, the examiner does not agree and asserts that the independent claims have been properly rejected and as such these dependent claims have also been properly rejected under § 103(a).

This action is non-final.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0830-1700, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul Durand
January 31, 2008